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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLN NO. 216 OF 1998

1) Krishnakumar G. Kalra & Anr.
2) Rajendrakumar K. Kalra .. Applicants/
Petitioners

versus

1) Sr. Inspector of Police,
Pydhonie P.stn.Mumbai
2) State of Maharashtra .. Respondent

Mr.Shirish Gupte, Sr.Counsēl with Mr.H.K. Prem for
the petitioners.

Mr.U.V. Nikam APP for the State.

Mr.J.L. Faujdar for respondent no.3.

CORAM : D.G.KARNIK, J

DATED : 29th November 2007.

ORAL JUDGEMENT :-

1. This Revision Petition is directed against the judgement and order dated 6th August 1998 passed by the learned Addl. Sessions Judge, Greater Mumbai allowing the Criminal Revision filed by Pramod Gupta (respondent no.3 herein) and thereby quashing and

setting aside the order dated 18th December 1996 passed by the Addl. Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Mumbai discharging the petitioners.

2. The facts necessary for consideration of the Revision Petition in brief are as follows :-

. Petitioner no.1 and 2 are father and son. The petitioner no.1 is carrying on business as a broker in steel items, in Mumbai for more than 40 years and the petitioner no.2 helps him therein. Sometime in the first week of December 1989, the petitioners approached one Mr.Kasturilal Gupta (father of respondent no.3) with a business proposal to sell steel stated to have been imported by M/s.Alpine Industries. They offered 100 tonnes of imported cold rolled steel sheets at the rate of Rs.17 per kg. They told him that out of the total price of Rs.17 lakhs Rs.7 lakhs be paid as advance and balance Rs.10 lakhs be paid at the time of delivery. Believing their representations Kasturilal gave them a demand draft of Rs.7 lakhs drawn in favour of Alpine Industries payable at Delhi. As nothing happened for 2 - 3 three weeks, Kasturilal approached the petitioners who gave some excuses and requested him to wait for some time.

The excuses continued for a long time and after about six months, petitioners told him that the goods were sold to someone else and they would return the amount of Rs.7 lakhs to him. The money was never returned. According to Kasturilal, the petitioners in collusion of Alpine Industries wrongfully induced them to pay by demand draft Rs.7 lakhs without any intention to honour the deal. They never had any intention to deliver the steel. They had therefore caused wrongful gain for themselves and wrongful loss to Kasturilal. Kasturilal, accordingly wrote a letter to the Joint Commissioner of Police on 16th March, 1992 intimating about the cheating caused by the petitioners and Alpine Industries. Thereupon, the police recorded the statement of Kasturilal and sent their team to Delhi for investigation and recorded the statements of the persons connected with Alpine Industries. After investigation, police were of the opinion that the partners of Alpine Industries and the petitioners had cheated Kasturilal and had committed the offence of cheating punishable u/s.420 r/w section 34 and in the alternative u/s.120 B of the Indian Penal Code (for short 'the IPC') Accordingly, a charge-sheet was filed on 5th April 1996 against the petitioners as well as the two partners of Alpine Industries in the Court of

Addl.Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Mumbai. The Magistrate took cognizance and issued summonses to the accused. The petitioners were served but the summonses of the other two accused viz. partners of Alpine Industries were returned unserved. On receipt of the summonses, the petitioners appeared before the Magistrate and made an application for discharge. By an order dated 18th December 1996, the learned Addl. Chief Metropolitan Magistrate passed an order discharging the petitioners from the charges levelled against them. By that time, the original complainant Mr.Kasturilal had died. His son Pramod who inherited the estate to Kasrutilal, filed a revision petition bearing no.93 of 1997 before the Sessions Court challenging the order of the Addl. Chief Metropolitan Magistrate discharging the petitioners. By an order dated 6th August 1998, the learned Sessions Judge allowed the revision petition filed by Pramod and quashed and set aside the order of the Addl Chief Metropolitan Magistrate discharging the petitioners. He further directed the petitioners to appear before the Magistrate on 7th September 1998 to enable the Magistrate to proceed in accordance with law. That order is impugned in this Revision Petition.

3. Mr.Gupte appearing on behalf of the petitioners submitted that the petitioners only acted as brokers in the transaction. The goods belonged to Alpine Industries of which accused nos.3 and 4 were the partners. The demand draft was drawn by Kasturilal in favour of Alpine Industries and was merely delivered to the petitioners for delivery to Alpine Industries. The petitioners had only delivered the demand draft to Alpine Industries who encashed it. The money was received by Alpine Industries and not by the petitioners. They had no knowledge of any fraudulent intention on the part of Alpine Industries or its partners not to deliver the goods to Kasturilal. The cheating, if any, was caused by Alpine Industries and not by the petitioners. There was no material on record to connect the petitioners with the alleged crime of cheating. In the absence of any material on record, the learned Sessions Judge erred in setting aside the order of the Magistrate discharging the petitioners.

4. I have perused the letter dated 16th March 1992 written by Kasturilal to the Joint. Commissioner of Police, Crime Branch which was treated as the First Information Report and on the basis of which the investigation was initiated and

carried out. I have also perused the charge-sheet as also the statements of the witnesses recorded during the course of investigation into the alleged crime. The persons whose statements are recorded are cited as witness at the trial. In the FIR Karsurilal has stated that he delivered the demand draft of Rs.7 lakhs to the petitioners on their representation that the imported material would be delivered to him on receiving the balance consideration of Rs.10 lakhs. He has averred that the petitioners had made a false representation that the consignment of imported steel was lying with the Bombay Dock with a view to induce him to part with Rs.7 lakhs. He has further stated that the petitioners had dishonestly played a trick on him and taken away the amount of Rs.7 lakhs from him. Police carried out the investigation at Delhi and interalia have recorded statement of Satish C. Gupta, who appears to be brother-in-law of one of the persons of Alpine Industries and in the know of facts. He has stated the amount of Rs.7 lakhs was taken by the petitioners from Alpine Industries. He has further stated that petitioners had also taken their commission and entire amount of Rs. 7 lakhs in order to make some payment to Mr.Saraf. This clearly shows that there is some material on record which shows that the amount of Rs.7 lakhs paid by

Kasturilal was collected by the petitioners from Alpine Industries either for themselves or under the guise of making some payment to Mr.Saraf. In the circumstances, it cannot be stated that there was no prima facie material on record indicating complicity of the petitioners warranting their discharge even before the trial. In my view, therefore, the order of the learned Addl.Chief Metropolitan Magistrate discharging the petitioners even before the trial was clearly erroneous. At that stage, the learned Magistrate was not called upon to assess the weight of evidence. He was only required to see whether there was no prima facie material on record which, even if believed, could not have brought home the guilt of the petitioners.

5. Mr.Gupte further submitted that the original complainant Mr.Kasturilal Gupta had died either before or soon after the learned Addl. Chief Metropolitan Magistrate passed the order dated 18th December 1996 discharging the petitioners. Mr.Kasturilal, therefore, could not have filed the revision and in fact the revision petition was filed before the Sessions Judge by his son Pramod. Mr.Pramod, according to Mr.Gupte, could not have filed the revision petition and the learned Sessions Judge could not have interfered with the order of

the Magistrate discharging the petitioners on the basis of an incompetent revision petition. In support of his submission, Mr.Gupte relied upon a decision of the Supreme Court rendered in Thakur Ram Vs. State of Bihar reported in 1966 Cri.L.J 700.

6. In Thakur Ram Vs. State of Bihar (Supra) an offence was registered against the accused persons and the challan (charge sheet) was filed before the Court of Magistrate, Ist class, who framed a charge u/s.392 of the I.P.C. The prosecution made an application to the Magistrate for framing a charge u/s.386 or 387 of the IPC and to have have the case committed to the Court of Sessions. By an order dated 25th January 1962, the learned Magistrate held that the charge was properly framed u/s.392 of the IPC and declined to refer the matter to the Sessions Court. Against that order revision application was preferred, not by the prosecution but by the original informant. The Sessions Judge allowed the revision application by observing that the case was of serious nature and framing of the charges u/s.386 or 387 of the IPC could not be ruled out altogether. He therefore directed that the case should be tried by a Court of Sessions and directed the learned Magistrate to

commit the accused persons for trial accordingly. The accused persons moved the High Court in Revision, in vein. Challenging the decision before the Supreme Court the accused inter alia contended that in a prosecution launched by the State, the original informant/complainant had no locus to file the revision application. In that connection, the Supreme Court observed :-

"In a case which has proceeded on a police report a private party has really no locus standi. No doubt, the terms of S.435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo moto. It would, however, not be irrelevant to bear in mind the fact that the Court's jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is

the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book."

It may be noted that the Supreme Court itself has observed that "barring few exceptions, in criminal matters, the party who is treated as the aggregate party is the State and it is for the State to take all steps necessary to bring the persons who has acted against the social interest of the community." (underlining supplied) The Supreme Court has thus recognised that in some exceptional cases the original informant may also be the person aggrieved. In the present case, the FIR was lodged by Kasturilal alleging that he was cheated by the petitioners. He had alleged that he was deprived of Rs.7 lakhs by the petitioners. Even as per the police investigation, the money appears to have gone to the petitioners. In the circumstances, it was he who was the person aggrieved as he was cheated and wrongful loss of Rs.7 lakhs was caused to him. Kasturilal claimed the right to recover this money

from the petitioners and Alpine Industries. Kasturilal having died intestate his right to recover this money was inherited by his son Pramod. Kasturilal and his estate was affected by the cheating. Therefore, this was a case which could be regarded as exceptional, wherein the original informant and on his death his heirs had a right to file the revision against the order of wrongful discharge.

7. A reference may be made to a recent decision of the Supreme Court in J.K. International Vs. State, Govt. of NCT of Delhi & ors. reported in AIR 2000 SC 1142. In that case, the appellant before the Supreme Court had filed a complaint before the police that the respondent had committed offence of criminal breach of trust and cheating. FIR was registered on the complaint filed by the applicant. the respondent then moved the High Court by filing Writ Petition for quashing the FIR. The appellant was not made a party to the petition and therefore, an application was made in the High Court for impleading him (original complainant) as a party. Relying upon the decision of the Supreme Court in Thakur Ram Vs. State of Bihar (Supra) the High Court rejected the application. Reversing the decision of the High Court, the Supreme Court

observed :

"(8) Held, it may not be that complainant should have been made party. But the right of complainant to be heard does not cease once cognizance is taken and he can thereafter continue to participate in proceedings as if he were aggrieved party. When the complainant wishes to be heard when the criminal proceedings initiated at his behest are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the Court in that behalf. What is the advantage of the Court in telling him that he would not be heard at all even at the risk of the criminal proceedings initiated by him being quashed. It is no solace to him to be told that if the criminal proceedings are quashed he may have the right to challenge if before the higher forums."

8. The decision of the Supreme Court in Thakur Ram was referred to and explained by the Supreme Court in J.K. International (Supra). The Supreme

Court recognised the right of original complainant to be heard when the criminal proceedings are sought to be quashed. The ultimate effect of discharge is similar to the quashing of the proceedings. If the original complainant has a right to be heard in a proceeding for quashing the complaint he must be held to have a right to be heard at the application by the accused for the discharge. He (original informant/complainant) would also be entitled to file a revision, provided of course, on the facts and circumstances of the case Court considers him to be a person aggrieved.

9. The matter can be looked at from another angle. Under section 399 of the Code of Criminal Procedure, 1973 the Sessions Judge is entitled to exercise the powers of revision suo moto. Once the Sessions Judge decides to exercise the powers of revision, he has all the powers which can be exercised by the High Court under sub-section(1) of section 401 of the Code of Criminal Procedure. The powers of the Sessions Judge in revision are co-extensive with the powers of the High Court in revision. When does the Sessions Judge exercise the suo moto powers of revision? Is it by a quirk of chance of randomly calling records of one or some of the cases decided by a Magistrate? Though doing so

may not be illegal, the Sessions Judge would ordinarily act upon an illegality of an order of a magistrate coming to him notice either from a newspaper report or otherwise. He may also act on the illegality of any order or the proceeding being brought to his notice. It matters little, who brings to his notice the illegality of an order or the proceeding. Even if it is assumed that the original informant not being the person aggrieved does not have a right and is not entitled to file a revision, his application may motivate the Sessions Judge to call for the record of a case before the Magistrate and thereafter if the Sessions Judge is satisfied about the illegality of the order passed by the Magistrate, he ought not refuse to exercise the jurisdiction of revision only on the ground that illegality was brought to his notice by the complainant/original informant. Certainly when the Sessions Judge acts suo moto he necessarily acts upon an illegality in any order of the Magistrate coming to his notice by any means - by newspaper reports or otherwise. The original complainant or informant may only be instrumental in bringing to the knowledge of the Sessions Judge any illegality of proceeding or an order of the Magistrate. The Sessions Judge may not hear the complainant/original informant in revision but if he is satisfied, on the basis of the

information brought to his knowledge by the original complainant or otherwise, that the order of the Magistrate is patently illegal, it cannot be said that the Sessions Judge cannot act upon it because it is not a suo-moto revision but a revision initiated on the information received from the complainant/informant.

10. In the facts and circumstances of the present case, son of Kasturilal certainly had the interest in bringing the culprits to the book who had duped his father and his estate in the sum of Rs. 7 lakhs. In the circumstances, though the revisional jurisdiction was invoked by Pramod, the son of Kasturilal, it can be said that he was only instrumental in bringing to the knowledge of the Sessions Judge the illegality in the order of the Magistrate. Thereupon the Sessions Judge was entitled to act suo-moto. The Sessions Judge has so acted and set aside the order of the Magistrate, which cannot be faulted.

11. In the facts and circumstances of the case I am satisfied that justice has been done by setting aside the order of the Magistrate because the order of the Magistrate discharging the accused was patently illegal. For this reasons also I am not inclined to interfere in exercise of revisional

jurisdiction in the order passed by the learned Sessions Judge.

12. For these reasons, the revision fails. Rule is discharged.

13. The petitioners shall appear before the concerned Magistrate on 7th January 2008. All the record and proceedings be sent back to the concerned Magistrate forthwith.

(D.G. KARNIK, J)